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No. 93-1318

In The

Supreme Court of the United States

October Term, 1994

INTERSTATE COMMERCE COMMISSION,

Petitioner,

v.

TRANSCON LINES, *et al.*,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

SUPPLEMENTAL BRIEF

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Respondents submit this brief under Rule 25.5 of the Supreme Court Rules to notify this Court of intervening new matter that discusses the recently enacted legislation ("TIRRA") referred to in Petitioner's voluminous filing under letter dated October 31, 1994, the day before oral argument. That intervening new matter, which discusses TIRRA, is Petitioner's Policy Statement on the Transportation Industry and Regulatory Reform Act of 1994, Ex Parte No. MC-222, 10 I.C.C.2d 251 (October 24, 1994) (the "ICC Policy Statement"). The ICC Policy Statement explains that collectively made bureau tariffs will nevertheless continue to apply under the filed-rate doctrine, even after TIRRA repeals the filed-rate doctrine for motor

common carriers of property. ICC Policy Statement, 10 I.C.C.2d 252-54. That point is relevant for two reasons:

1. During oral argument, the Court asked one or more questions about the function of a bureau tariff, which is the kind of tariff that Respondent Trustee contends he must enforce under the terms of Transcon's loss-of-discount tariff provision in Transcon's rules tariff (Item 210 of Transcon's TCON 103 tariff). The ICC Policy Statement reflects that, even after Congress prospectively repealed the filed-rate doctrine on a limited basis for motor common carriers. Congress decided that bureau tariffs would remain a part of the "filed rate" of participating motor common carriers.

2. During oral argument, Respondents' counsel of record indicated to the Court that Transcon's loss-of-discount tariff provision, which operates to require late-paying shippers to pay the bureau tariff rates, could be characterized as "liquidated damages" as opposed to a "rate." That assertion was inaccurate in that: (a) as reflected by the ICC Policy Statement, even under TIRRA, bureau tariff rates will continue to be a part of a participating motor common carrier's "filed rate"; and (b) the imposition of the bureau rates for late paying shippers is a "rate" for "transportation" and "service" as defined in 49 U.S.C. §§ 10102(26)(A)-(B) and 10761 as it represents the carrier's tariff based charge for the "transportation"

of the freight for, and the subsequent "service" of having to collect the freight charge from, delinquent shippers.

Respectfully submitted,

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